IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

Cr.A.No.391 of 2000

Date of Decision :19th September, 2007.

State of H.P. …Appellant.

Versus:

Kishori Lal and others. …Respondents.

Coram:
The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the appellant: Mr.Ashok Chaudhary, Addl. Advocate General.

For Respondent.

Sanjay Karol, J (Oral).

The present appeal arises out of the judgment dated 27th October, 1999 passed by Additional Chief Judicial Magistrate, Barsar, District Hamirpur in Criminal Case No. 77-I/94 RBT 2-III/1998 titled as State Vs. Kishori Lal and others acquitting the accused of the charged offence.

On 20th June, 1993, Station House Officer, Police Station, Barsar received a secret information that the accused persons were illegally transporting the forest produce in Truck No. HPS-1721. Based on the same, rukka Ext.PW-14/A was sent

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

to Police Station, Barsar, Hamirpur, H.P. on the basis of which F.I.R. No.51/95 under Sections 41 and 42 of the Indian Forest Act and Section 379 read with Section 120-B of the Indian Penal Code was registered. Nakabandi near place Harsour was set up and Mohinder Singh (PW-1) and Sanjay Kumar (PW-13) independent persons were associated. The accused persons were found travelling in the truck and since they did not stop the vehicle inspite of signal having given to them, the police party chased and apprehended them. On checking the vehicle, 191 tins of resin were found and on demand no permit could be produced authorizing them to transport the forest produce. Consequently, the truck and the resin were impounded.

After completion of the investigation, challan was presented in the Court and charges against the accused persons under Sections 41 and 42 of the Indian Forest Act and Section 379 read with Section 120-B I.P.C. were framed. The accused pleaded not guilty and claimed trial.

The prosecution examined 14 witnesses and the statements of the accused persons were also recorded under Section 313 Cr.P.C. and also examined two persons as defence witnesses.

After appreciating the statements of the witnesses, the court found that Sanjay Kumar (PW-13) one of the independent witnesses to the recovery has not supported the prosecution. Barfi Ram (PW-3) and Gagan Singh (PW-12) have

turned hostile and the deposition of PW-1 to PW-10 was self contradictory and, therefore, not much reliance could be placed on the same as they did not appear to be truthful witnesses. Nika Ram (PW-10) was found to be a stock witness of the Police.

Out of the fourteen witnesses, Mohar Singh (PW-1), Sanjay Kumar (PW-13), Partap Singh (PW-7) and Krishan Gopal (PW-14) were examined in order to prove the guilt of the accused persons. PW-13 has denied the version of the prosecution in toto and after having been declared hostile was cross-examined by the State and nothing could be elicited from his statement. Moreover, he has stated that when the police had called him to the Police Station, the truck was empty and the resin was lying in the court yard of the Police Station. Mohar Singh (PW-1) has stated that the police officials had met him on the day of the occurrence during the night whereas from the statement of PW-7, it has come on record that PW-1 was with them since morning. Further PW-1 has stated that it took only 30-40 minutes to complete the codal formalities on the spot whereas PW-7 has stated that it took 3-4 hours to prepare the papers etc. As per PW-7, the 'Dibba' (Tin) in which the resin was taken as sample was with the Station House Officer concerned whereas as per the version of PW-14 he had sent a person to a place called Talai from where the 'Dibba' was brought.

Thus, there are vital contradictions in the statements of PW-7 and PW-14 and their statements independently cannot be relied upon to prove the guilt of the accused. PW-10 has already been held to be a stock witness by the Court below. Further, PW-1 has made a statement in collateral proceedings (Ext.DW-2/C) to the effect that he did not know as to from where the resin had come and that he had been called to the Police Station where his signatures were obtained. He had not seen the truck loaded with tins of resin and was only informed by the police officials that the resin had been recovered. PW-10 has also stated that he did not see anybody loading the resin in the truck and was called to the Police Station where his signatures were obtained. The other witnesses are formal in nature.

Having gone through the record and the statements of the witnesses, I am of the view that the court below has correctly appreciated the evidence on record while arriving at its decision in acquitting the accused persons. Importantly there is no evidence whatsoever to the effect that the tins containing resin were stolen by the accused persons from any place belonging to the State.

I am of the view that there is no cogent and convincing evidence to show complicity of the accused persons in the commission of the alleged offence. The prosecution has failed to prove the case against the accused persons beyond

reasonable doubt. Simply because there has been recovery of 191 tins of resin by the Police in itself would not show the presence of the accused persons or complicity at the time of the occurrence of the alleged offence.

For the aforesaid reasons, the appeal is dismissed. Bail bonds are discharged.

(Sanjay Karol),
Judge.

September 19, 2007(R)